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S E C R E T SECTION 01 OF 03 PANAMA 000823
SIPDIS

DEPARTMENT FOR WHA/CEN/BRIGHAM
DEPARTMENT PLEASE PASS TO USAID ADOLFO FRANCO (AA/LAC),
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SUBJECT: PANAMANIAN SUPREME COURT THROWS OUT CHARGES
AGAINST ISRAELI ARMS SMUGGLER

REF: A. 02 PANAMA 2820
[B](#). 02 PANAMA 1518
[C](#). 03 PANAMA 2451
[D](#). 03 PANAMA 3294
[E](#). PANAMA 0730

Classified By: Charge d'Affaires Christopher J. McMullen for reasons 1.
4 (b) & (d)

SUMMARY: Arms Trafficker Walks

[1](#). (C) Citing "lack of jurisdiction," by an 8-1 vote, Panama's Supreme Court has terminated Public Ministry investigations of all charges against Israeli national Shimon Yalin Yelinek, currently residing in Panama, for his alleged role in smuggling Nicaraguan military weapons to the paramilitary United Defense Forces of Colombia (AUC). More than one source has alleged that all eight justices who voted for the decision received bribes. With the Supreme Court's action, announced in print and television media during the week of March 29, there are no other charges pending against Yelinek in Panama or any other country, including the United States. (NOTE: Yelinek is the subject of an ongoing DEA money laundering investigation. END NOTE.) Nicaraguan authorities have not brought charges against Yelinek or any Otterloo defendants, while Colombian authorities have charged two Otterloo defendants, but not Yelinek, GOP sources told EmbOffs. Embassy is assessing appropriate responses to the Court's latest questionable decision, which has brought this institution to a new low in terms of credibility. END SUMMARY.

The lone dissenting opinion

[2](#). (C) The Supreme Court's decision that Panamanian Courts have no jurisdiction in the Otterloo case surprised many observers, given the fact that the defendants had been charged with falsifying Panamanian National Police documents and using a Panamanian flagged vessel, owned by a company headquartered in Panama. Lone dissenting Supreme Court Justice Adan Arnulfo Arjona (please protect) told AID Director on April 1 that the majority ruled on issues he believes should have been left to lower courts.

[3](#). (C) Arjona lamented that since taking leadership of the Court in January 2004, Supreme Court President Cesar Pereira Burgos is making the Court's decisions and operations more and more opaque, restricting public access to Court opinions and doing away with internet publication of rulings, the latter an AID-funded initiative the Court took under Arjona. Arjona criticized Pereira for having ruled differently on two nearly identical cases. An April 4 La Prensa article cites the same two cases, and chides the Court for lack of consistency, comparing Court decision-making to a child picking petals from a daisy. Under Pereira, the Court has rejected any reliance on precedent, calling into doubt this institution's credibility with the Panamanian public.

Who is Carlos Carrillo?

[4](#). (C) Arjona alerted AID Director that Yelinek's Panamanian lawyer, Carlos E. Carrillo, is one to watch. Carrillo is the attorney who defended sitting Legislator Pedro Miguel Gonzalez, wanted for the 1992 murder of U.S. Army Sergeant Zak Hernandez (Ref. D), and then helped prosecute former Judicial Technical Police Director Jaime Abad on trumped up charges of evidence tampering. (Abad had led the investigation in the Gonzalez case). Carrillo also represented alleged CEMIS bag-man and PRD Legislator Mateo Castillero. (NOTE: The CEMIS scandal involved another Supreme Court decision that has raised concerns about corruption within this institution. See Reftel C for details. END NOTE.) Recently Carrillo has represented the sister of drug trafficker Jesus Arcangel Henao Montoya as well former President Ernesto Perez Balladares (EPB) in other

controversial cases tried before Panama's Supreme Court.
(EPB won his case, and it appears that Lorena Henao Montoya
also will.)
Case Details

15. (S) According to reftel B, in November 2001, the suspect cargo vessel Otterloo, delivered from Puerto El Bluff, Nicaragua, to Turbo, Colombia, 14 containers of Nicaraguan military weapons -- approximately 3,000 AK-M rifles and five million rounds of ammunition. In January 2002, the Panamanian National Police (PNP) seized and searched the Otterloo in Panamanian waters after receiving a tip from Colombian authorities. The guns and ammo never were recovered, but the size and nature of the shipment were pieced together by police work and intel reports. The PNP discovered two conflicting sets of cargo records and took statements from the ship's crew regarding the Otterloo's true cargo. Nicaraguan officials then produced a weapons purchase order allegedly authorized by mid-level PNP officials that was later proved to be a forgery. The document was traced to Shimon Yalin Yelinek and two Israeli nationals residing in Guatemala. Yelinek faced charges in Panama for forgery and conspiracy in the illegal shipment of weapons and was released on \$750,000 bail. A specially formed OAS commission implicated Yelinek, but exonerated Panamanian authorities.

16. (C) The Supreme Court's majority decision to quash the Yelinek case cites a lack of evidentiary ties (nexus) to Panama to allow Panama's Supreme Court to assert jurisdiction. The justices ruled that there is no evidence that meetings took place in Panama to purchase the weapons and ammunition, that the purchase order was not issued in Panama, and dismissed forgery charges. The ruling ignores the Otterloo's Panamanian flag (and legal responsibilities under that registry) and the fact that the forged purchase order was a Panamanian National Police (PNP) document.

Comment: Next Steps

17. (C) In yet another example of Panama's Supreme Court deep-sixing a high profile corruption case on trumped-up technicalities, Panamanians are becoming increasingly disenchanted with their high court. (NOTE: Panama's press closely covered the Yelinek case and reported a blow-by-blow of bribery accusations and deliberations in the equally egregious multi-million CEMIS case, which the Supreme Court threw out on September 17, 2003. END NOTE.) Despite his insistence that complainants exhaust all other options before filing constitutional claims with the Supreme Court, Pereira accepted another particularly contentious case, ordering the immediate release of Former President Perez Balladares' assets, which the Comptroller General's office froze based on EPB's ties to the PECC scandal. (See Reftel D.)

18. (C) DEA's investigation of Yelinek continues. DEA Panama has requested the assistance of DOJ's Assets Forfeiture Money Laundering (AFML) Section for an eventual prosecution in the United States. Despite reports that Yelinek is trying to "expedite" his naturalization as a Panamanian citizen, high GOP officials are apparently angry with the ruling and seeking to have Yelinek's residency revoked in order to expel him from Panama. Panama's constitution prohibits extradition of Panamanian citizens, which would complicate future US prosecution of a case against him if he were to gain citizenship.

19. (C) We believe that this type of egregious corruption in the courts poses a threat to U.S. economic and security interests in Panama. Unfortunately, decisions driven by factors other than jurisprudence are seen at all levels of Panama's judicial system. The lack of positive role models at the top appears to drive the lack of political will among leaders to tackle fundamental weaknesses in the judiciary. Expressions of USG concern would have the greatest demonstration effect if directed at the top of the judicial hierarchy. Thus, Embassy is including whether a 212(f) visa revocation would be appropriate for any of the individuals involved in this case in its assessment of options for responding to the Supreme Court's latest dubious decision. Another option we will consider is suspending USAID's assistance to the Supreme Court, channeling it instead to civil society.

MCMULLEN